

MINUTES  
WARRICK COUNTY AREA BOARD OF ZONING APPEALS

Regular meeting to be held in the Commissioners Meeting Room,  
Third Floor, Historic Courthouse,  
Boonville, Indiana  
March 28, 2011 at 6:00 P.M.

**MEMBERS PRESENT:** Larry Willis, Chairman; Mike Winge, Vice Chairman, Tina Baxter, Scott Dowers, Judy Writsel, Terry Dayvolt and Don Mottley.

Also present were Attorney, Morrie Doll, Sherri Rector, Executive Director and Secretary, Christy Powell and Jacob Key, Staff.

**MEMBERS ABSENT:** Roll call was taken and a quorum declared present. The Chairman explained the Rules of Procedure to the audience. The Chairman led the Board in the Pledge of Allegiance.

**MINUTES:** Upon a motion made by Mike Winge and seconded by Tina Baxter, the minutes of the last regular meeting held February 28, 2011, were approved as circulated.

Mrs. Rector stated to let the record show that Don Mottley arrived at 6:05pm.

**SPECIAL USES:**

**BZA-SU-11-05:** APPLICANT: Jeffrey & Diane Jason. OWNER: Michael & Amanda Voegelé  
**PREMISES AFFECTED:** Property located on the E side of Ellis Rd. (E 275) approximately 0' N of the intersection formed by Ellis Rd. (E 275) and Austill Rd. (N 625) Owen Twp. (Complete legal on file.) *6044 Ellis Rd.*

**NATURE OF CASE:** Applicants request a Special Use SU-24 from the requirements as set forth in the Comprehensive Zoning Ordinance in effect for Warrick County, Indiana to allow a Dog Kennel with a maximum of 12 dogs in an "A" Agriculture Zoning District. *Advertised in the Boonville Standard March 17, 2011.*

Diane Jason approached the podium.

Jeffrey Jason approached the podium.

Mrs. Rector stated they have all the return receipts from certified mail to the adjacent property owners. She stated it is a request for a SU-24 to allow a dog kennel in the existing unattached accessory building not to exceed 12 dogs in an "A" Agriculture Zoning District. She stated the applicant states they will be updating the building. She referred to the submitted layout; the applicant is showing 4 small dog kennels and baths, 6 big dog kennels with two covered and fenced runs and an office/reception area. She stated the applicant has answered the questions on the proposed use statement which the Board has copies of. She stated the subject property and

all surrounding properties are zoned "A" Agriculture with residences and farms to the north and west, and vacant land to the south and east. She stated there is a small portion of Zone A Flood Plain on the far west side of property. She stated the property is accessed by Austill Rd. which runs directly through the property. She stated the applicant is showing 6 parking spaces on the enlargement. She stated it is a 23.5 acre piece of property under contract for sale to the Jasons'. She stated the sale of the property is contingent upon the Special Use approval. She stated Aaron Franz of the Health Department has submitted a letter stating the proposed boarding kennel does not need any septic considerations. She stated he writes "according to her use plans and consultation with the Indiana State Department of Health, her dry cleaning method is sufficient as long as there is no running water." She continued that Bobby Howard, County Engineer, is not requiring any type of commercial drive. She stated the application is in order.

Mr. Willis asked if the petitioners had anything to add to the Executive Director's report.

Mrs. Jason stated no.

Mr. Willis asked if there were any questions by the Board.

Mr. Winge asked for her to explain her dry cleaning method.

Mrs. Jason stated if they had a dog in their house they would clean it up and put it in the garbage then mop it up with a mop. She stated she has worked in dog kennels for a number of years and she has never put anything down in the sewer system because it makes the sewer system smell bad. She stated therefore they just pick it up and dispose of it as need be.

Mr. Winge asked if there would be any type of water to this building to water the animals.

Mrs. Jason stated yes there is water right outside the door but it is not in the building yet. Mrs. Jason stated the thing with the septic system was that there were no drains or water in the building so therefore they didn't need a sewer line.

Mr. Winge stated for clarification the letter received from the Health Department stated she was not to have water in there.

Mrs. Jason stated there isn't any right now, possibly after they get up and running and make some money they could re-build or add but not at this time.

Mr. Willis asked if they have no water inside but water outside, how they will rinse the mop out without water.

Mrs. Jason stated she would use a Swiffer and throw away the disposable pad. She stated she will have to use a Parvo clear, something that kills the bacteria, so that would be sprinkled on first, then wiped up with the Swiffer.

Mr. Jason stated it actually comes up like a mud, like a wet solid.

Mr. Dayvolt asked what the purpose of this kennel would be.

Mrs. Jason stated it would be for temporary boarding.

Mr. Willis asked if the building is existing.

Mrs. Jason stated it already exists; they have been using it for storage.

Mr. Willis asked what type of construction materials the building was made of.

Mr. Jason stated it is a wood pole barn with aluminum siding and it is insulated.

Mr. Dayvolt asked if it is being used as a kennel now.

Mr. Jason stated no.

Mrs. Baxter asked how they would control the temperature inside.

Mrs. Jason stated she would have air conditioning and heat in there.

Mr. Willis asked if the owner of the property is present.

Michael Voegle approached the podium and stated his name.

Mr. Willis asked if there were any questions by the Board.

Mrs. Writsel asked if this parking lot was gravel.

Mrs. Jason stated yes.

Mr. Mottley asked how far away the closest neighbor is.

Mr. Jason stated about a quarter mile. He stated there is one kind of southwest and one kind of northwest but they are mostly west.

Mr. Willis asked if there were any other questions by Board Members. There being none he asked for any remonstrators for or against this petition. There being none he asked for further questions by Board Members. There being none he entertained a motion.

Mike Winge made a motion finding of fact be made as follows from the testimony and proposed use statement:

1. The USE is deemed essential or desirable to the public convenience or welfare.
2. The USE is in harmony with the various elements or objectives of the Land Use Plan for Warrick County.

3. The USE will not be a nuisance or serious hazard to vehicles, pedestrians, or residents.
4. The USE as developed will not adversely affect the surrounding area.
5. Adequate and appropriate facilities will be provided for proper operation of the USE.
6. The specific site is appropriate for the USE.

And the Application be approved in accordance to the application and plans on file, subject to the following conditions:

1. Subject to any required Building Permits being obtained.
2. Subject to the Special Use not being altered to become any other use nor expanded than that which was approved by the Board of Zoning Appeals.
3. Subject to the property being in compliance at all times with the applicable zoning ordinances of Warrick County.
4. Subject to all public utility easements and facilities in place.
5. Subject to any requirements from the Health Department for septic system.

Don Mottley seconded and the motion carried.

**BZA-SU-11-06:** APPLICANT: Liberty Mine, LLC. By Alex Messamore, Mgr. of Permits and Land Acquisition OWNER: ALCOA Fuels, Inc. By, Laurie Thering, Vice President and Daryl & Beth A. Mottley

**PREMISES AFFECTED:** 1108 acres located on the N side of New Harmony Rd. and 276 acres located on the S side of New Harmony Rd approximately 0'E of the intersection formed by New Harmony Rd. (N 400) and Weyerbacher Rd. (W 600) Campbell Twp. (Complete legal on file.)

**NATURE OF CASE:** Applicant requests a Special Use SU-13 from the requirements as set forth in the Comprehensive Zoning Ordinance in effect for Warrick County, Indiana to allow mineral extraction, storage, and processing, and/or oil/gas production in an "A" Agriculture, "M-2" General Industrial, and "CON Recreation and Conservancy Zoning Districts. *Advertised in the Boonville Standard March 17, 2011.*

Alex Messamore approached the podium and stated he is representing Liberty Mine LLC.

Jim Beck approached the podium and stated he is the Communications and Public Affairs Manager at Alcoa Warrick Operations representing Alcoa tonight.

Mr. Messamore stated the lease that Liberty Mine LLC has with the Motleys' gives Liberty Mine Power of Attorney in regulatory matters.

Attorney Doll asked if he could provide a copy of that to the Executive Director.

Mr. Messamore submitted the document.

Attorney Doll stated it was sufficient. He asked if the Planning Commission could have a copy of the document.

Mr. Messamore stated there were terms in there that would need to be redacted.

Mrs. Rector stated if he could do that and get the office a copy for their records.

Attorney Doll stated just to copy the cover page, page 1, 15, 16, 18, and 19.

Mr. Willis asked for a staff report.

Mrs. Rector stated they have all return receipts except Elsie W. Bircher Estate, Etal but they do have the white pay receipt and confirmation printout from UPS stating the notice was left March 7<sup>th</sup>, 2011. She stated this is an application for a special use SU 13 to allow mineral extraction, storage, and processing, and/or oil/gas production. She stated the applicant has answered the questions on the proposed use statement which details the operation. She suggested the Board review that because it goes into great length about their operation. She stated the subject property and all surrounding property is vacant and zoned "A" Agriculture except for Alcoa's Lease to El Dorado Chemical Co. and railroad car storage to the southeast which is zoned "M-2" General Industrial. She stated there is also a railroad to the south. She stated there is also some Zone A flood plain. She stated the property has access to New Harmony Rd. and Bobby Howard, County Engineer, is requesting a Commercial Drive for the entrance. She stated the proposed plan is to haul the coal by rail and if Liberty Mine decides to use Weyerbacher Rd. or New Harmony Rd., they must enter into a Road Use Agreement with the Commissioners. She stated the application is in order.

Mr. Willis asked if the petitioners had anything to add to the Executive Director's report.

Mr. Messamore stated the only thing he would add is that their permit is currently under review by several state and government agencies such as Indiana Department of Natural Resources, Division of Reclamation, Indiana Department of Environmental Management, Army Corp of Engineers. He stated they will be compliant with all of the permit requirements and those agencies will evaluate their application. He stated once they have approval that would be when they start operations.

Mr. Willis stated the review is a normal process in the application permitting.

Mr. Messamore stated yes.

Mr. Willis asked if there were any questions by Board Members.

Mr. Mottley asked if Crossroads Cemetery would be accessible all the time.

Mr. Messamore states yes it will. He stated it is outside of the permit boundary and their permit boundary is 100' away from the boundary of the cemetery.

Mr. Dayvolt asked if this ground has been previously mined.

Mr. Messamore stated yes, this is ground that has been previously mined by Squaw Creek Coal Company. He stated they recovered the 6 coal seam which is at a higher elevation than the 5 coal seam. He stated they will be going to that lower elevation and mining the 5 coal seam.

Mr. Dayvolt asked how deep that will be.

Mr. Messamore stated it will be about 80 feet to a maximum of about 120-130 feet.

Mr. Winge asked about number 3 on page 4 where it says it could be a nuisance or serious hazard to vehicles pedestrians or residents. He asked if Mr. Messamore could go over that topic and explain it.

Mr. Messamore stated whenever mining activity is within 100' of the right of way of a public road they are required to construct a safety berm which would be at least 5' high and sloped so that would prevent access from someone coming into the mine. He stated additionally all of their access points will be gated and security there on all fires.

Mr. Willis asked for other questions by Board Members.

Mr. Mottley asked if Mr. Messamore knew where DNR is in their permit process.

Mr. Messamore stated yes, they have issued Liberty Mine a modifications letter. He stated in other words they have reviewed the application and there are some modifications they will need to make to the application to have it regulatory compliant and Liberty Mine's engineering staff is currently working on those modifications so they are well along in the process.

Mr. Mottley asked how far along they are with IDEM.

Mr. Messamore asked which branch.

Mr. Mottley stated NPDS for example.

Mr. Messamore stated with NPDS, the application has been submitted and is currently under review.

Mr. Mottley asked about the Air Permit.

Mr. Messamore stated the Air permit has been issued and he actually received it in the mail today.

Mr. Mottley asked if they were going to be hauling out the coal by rail.

Mr. Messamore stated yes that is the preferred method at this point in time. He stated obviously Alcoa and Liberty Mine are in negotiation with the railroad with what the haulage rates would be. He stated as a fall back the coal would need to be trucked if for some reason they were not able to successfully negotiate delivery by rail. He stated there is an existing siding that reaches this side and then it would hit the main line then go into the plant down at Alcoa.

Mr. Willis stated for clarification, the coal coming out of the mine will come south and go to Alcoa so they will have a wash basin and everything up there.

Mr. Messamore stated there will be a preparation plant, a wash plant on site and yes the majority of this coal, this is a joint venture between Liberty Mine LLC and Alcoa and the majority of this coal is proposed to be delivered to the Warrick Operation.

Mr. Willis asked if it does come by rail, how many train cars they are talking about.

Mr. Messamore stated if it is consistent with the deliveries that they make from their mine in Illinois it would be 100 train cars, 99 he thinks.

Mr. Willis asked what the frequency would be.

Mr. Messamore stated the tonnage levels that they are looking at, they would be looking at delivering somewhere around 10-12 trains a month so they would have 12 days a month.

Mr. Winge asked if it doesn't work out by rail then they are talking about having to truck and what will be done about the roads, entryways, mud etc.

Mr. Messamore stated what he would say on that is Liberty Mine is an affiliate company of Vigo Coal Company. He stated Vigo Coal has operated mines in Warrick County for the last 12 years and currently operate the Chili Pepper Mine where the coal is trucked and they understand the importance of cleaning the roads and avoid leaving debris or hazards. He stated they also work with the county on maintenance. He stated they sign maintenance agreements with the County and they feel like they have been very good at doing their part on repairs and it would be something they could talk to Bobby Howard about. He stated they understand the responsibilities that come along with having a usage agreement with the County.

Mr. Mottley stated they had a wheel wash at the Cypress Creek Mine.

Mr. Messamore stated no, he knows what he is talking about though. He stated they had one up at Carbotronics. He stated the way they were set up at Cypress Mine; they just didn't track that much out on the road.

Mr. Willis asked if they don't go by rail and they have to go by truck, how many trucks they are talking about in a day.

Mr. Messamore stated it would take 4 trucks for each rail car which would be 400 trucks.

Mr. Winge stated that is a lot of trucks.

Mr. Messamore stated he wants to emphasize that the preferable method is by rail.

Mr. Willis stated they understand that the preferred route will be rail.

Mrs. Rector asked if the road construction gets to the rail road tracks down there at the edge of town, if the tracks will have to close down on SR 62.

Mr. Winge stated when they come through there it is about 8-10 minute trip.

Mrs. Rector asked if that is the track they are talking about.

Everyone agreed yes.

Mr. Winge stated they already go through there and have been.

Mr. Messamore stated that rail siding is used for coal deliveries now.

Mrs. Rector stated she just wondered if when they get to the expansion of the highway if they are going to have to close the tracks down for a period of time.

Mr. Winge stated if there is no overpass they might.

Mr. Willis stated he thought they've already upgraded that area.

Attorney Doll asked if they don't use rail what is the truck traffic route.

Mr. Messamore stated that would have to be determined. He stated there has been discussion of a bypass.

Mr. Beck stated recently INDOT did hold a hearing in Boonville about the bypass and much of the land that would be used for the bypass is controlled by Alcoa Fuels. He stated they have been in negotiation with the State talking about the land acquisition for that plan. He stated from what he understands from the State of Indiana right now it is in their 2016 transportation plan but they are aware of the applications that are before other state agencies to do this mine. He stated they have been told that their preferred route is rail but they also understand that the mine development in northern Warrick County may potentially accelerate the development of the bypass. He stated but right now they are talking 2016 which ALCOA would prefer to begin mining in 2012 for this application before the Board tonight.

Mr. Winge asked if they do this by rail, if this is new coal moving on top of what they are hauling already.



Mr. Messamore stated the coal that Liberty Mine would supply to ALCOA would replace deliveries that are already made.

Mr. Winge asked if they would be passing through town during the night or day.

Mr. Messamore stated if it is consistent with the loading schedule that they have in their mine in Illinois then it will be done during the day.

Mr. Winge stated why it would be during the day when traffic is the heaviest as opposed to late at night.

Mr. Messamore stated that decision is a little bit farther down the road and could be determined.

Mr. Beck stated to clarify, they do get trains that arrive at Alcoa from the mine that they own in Friendsville, in Mt. Carmel, Illinois that is operated by Vigo Coal. He stated that train would continue to arrive and this particular project would fill the gap that they have from other coal suppliers including some coal that they get from Chili Pepper Mine which is concluding. He stated there still would be train shipments from Friendsville and this would be coal coming that would fill about half of their supply that would be coming from Liberty mine.

Mr. Mottley asked if Peabody Coal or one of their subsidiaries use that rail for Yankeetown Dock also.

Mr. Messamore stated yes he believes so.

Mr. Mottley stated so it is not just Vigo Coal using that rail.

Mr. Messamore stated he is pretty sure that is a common carrier but he is getting a little bit out of his area of expertise.

Mr. Winge stated he likes to see the progress and so forth but he would like to see some kind of plan with the traffic. He stated he thinks it would be reasonable to look at these things late at night.

Mr. Mottley asked what locomotive company they are using.

Mr. Beck stated he thinks it is Norfolk Southern but he knows there are discussions going on with tracking rights and other issue related to their rail.

Mr. Mottley asked what train brings coal from Friendsville.

Mr. Messamore stated Norfolk Southern.

Mr. Mottley asked if they are going to have this intersection tied up for a while if they will be able to notify the dispatcher so that they can reroute emergency vehicles.

Mr. Messamore stated again he would just point out that as an affiliate of Vigo Coal they have worked with Warrick County and yes they consistently in the past notify emergency vehicles on road closures and things in that regard.

Mr. Willis asked for other questions by Board members.

Attorney Doll asked how many jobs they are creating

Mr. Messamore stated this will bring about 60 jobs.

Mr. Beck stated one thing he does want to say, the number they give for the jobs at the mine is similar to what the mine that they operate in Friendsville which is about 50 jobs. He stated but more importantly this is more than just the jobs that they have related to the mining, it is the jobs they have to preserve, the 2000+ at Alcoa Warrick Operations. He stated energy is very important to the continued operation of the integrated facility that they have at Warrick Operations. He stated without low cost power they will have a very difficult time to compete on a worldwide market. He stated there are a shrinking number of aluminum smelters in the United States. He stated they are very proud that they do have the largest smelter here in Warrick County and an integrated operation that includes both coal reserves, a power plant, a smelter, and then a rolling mill so without competitive coal it makes it very hard to compete and continue to preserve the jobs that they have here in Warrick County. He stated furthermore with the investments they've made over the last years at the Warrick Power Plant including the scrubbers which is a 500 million dollar investment to remove sulfur dioxide, they can now use Warrick County Coal which traditionally with high sulfur, they would have had to import coal from other areas of the country rather than using what they have right here. He stated the question about jobs is certainly appreciated but he wants to make sure they also knew it was about the existing jobs that they have at Alcoa as well.

Mr. Willis asked if there were any more questions by the Board.

Mr. Mottley stated he would like to go on record that Darryl and Beth Mottley are related to him but distant.

Mr. Willis asked if there were any other questions by Board Members. Being none he asked for remonstrators for or against this petition.

Bill Musgrave approached the podium and stated his address is PO box 520, Chandler, IN. He stated any information he gives tonight he would be happy to supplement but it is on file at the Boonville Public Library and additional information is also on file on the Warrick County Courthouse. He stated he resides in Chandler. He is the president of the Chandler Volunteer Fire Department. He stated this mine partially encompasses their coverage area. He stated as far as the fire department, the area around Squaw Creek Mine has no fire hydrants so they rely on the ponds and lakes in case they need additional water supply. He stated volunteer fire departments unfortunately are running into a staffing problem so they have mutual aid agreements between Chandler Fire Department and Boonville Fire Department and all the Fire

Departments in the County. He stated they rely on Hwy 62 not being tied up for a long time because Boonville Fire Department has to cross that to get to their coverage area. He stated on a personal note, he worked at Squaw Creek Mine from 1977 to 2000. He stated in 2000 he was diagnosed with a rare form of cancer and given 3-6 months to live. He stated he was very fortunate and received a liver transplant at the Mayo clinic and was the 16<sup>th</sup> person in the world to survive that particular disease. He stated they were mining coal for Alcoa and they were also covering up waste during that time period. He stated what they didn't know at the time that it was waste from Alcoa or where it came from, the foreman just told them it was waste from Alcoa. He stated they found out much later that Alcoa used that as a dumping ground. He stated they dumped 69 million gallons of coal tar pitch which is a hazardous material. He stated they also dumped 7.4 million cubic feet of chromium sludge. He stated if the Board can imagine 69 million 1 gallon jugs or 7.4 million cubic feet of anything. He stated that is what is on record. He stated there is about a 4 year time period where Alcoa doesn't have any records for what they dumped. He stated this was all dumped at the Squaw Creek Mine and it encompassed all of the area of the Liberty Mine, not just part of it. He stated so what they are doing is where this waste was dumped; they are going back in there to re-mine it deeper. He stated it has resulted in 2 lawsuits that affect about 30 members of the community and other workers. He stated they noticed there were a lot of unusual deaths and unusual illnesses. He stated they started digging into it. He stated there have been doctors that have associated the chemicals Alcoa dumped with his disease. He stated his disease was 1 in 100,000 which is pretty rare. He stated he found out there were 7 other people in a 20 year time period that died in Warrick County of that disease. He stated one of them was his co-worker and a younger gentleman that also died waiting for a liver transplant who fished and swam in those pits. He stated 3 of the 7 deaths from that disease were associated with that area. He stated originally on this same ground the EPA identified 10 sites for possible inclusion in the CERCLA program so they would have to be cleaned up. He stated later on, only because of the rural nature (quoted out of the report) did they not make Alcoa remediate this area. He stated the waste was dumped, according to Alcoa, in 10 specific locations and that is simply not true. He stated they started dumping in 1965, he didn't work out there until 1977. He stated he did fish and recreate on the property. He stated there are other miners that have testified under oath that they have dumped chemicals outside of the areas Alcoa says it was dumped in. He stated he believes maps would be available where those miners say it was dumped. He stated the reason he brings that up, is it is right in the same permit area where Vigo and Alcoa want to go back in and mine. He stated Alcoa has said that the waste is stable and it doesn't move around. He stated that is not true, it resurfaced a lot at the mine as recently as 2005. He stated they had to take people from Alcoa and cover up the waste and report it to IDEM and fill out special paperwork so that the people that covered up the waste didn't get contaminated. He stated all these permits go on and IDEM says the fire clay right under the number 6 coal seam there is an impermeable barrier. He stated all of this toxic waste comes down, hits the fire clay then the toxic waste can't get any further below that unless it is disturbed. He stated now they are going to come in and mine 120' deep and, in their mining permit they state 180'. He stated the potential for waste migration is there and can affect the workers and everybody else. He stated IDEM saw that it was bad after Alcoa kept saying it wasn't a problem. He stated Alcoa had to go in and put environmental restrictive covenants, which are on file, on some of the ground. He stated this permit lets them mine within a 1000 feet of those covenants. He stated they are going to mine in close proximity to those environmental restrictive covenants. He stated also the permit that they applied for, DNR has sent back to them with 90 revisions or

deficiencies that need to be addressed. He stated DNR hasn't Okayed the permit. He stated April 7 there is a hearing that IDEM is having with Army Corps of Engineers whether to allow this mine. He stated it is not approved through them at all. He stated he thinks there are a lot of problems here. He stated Mr. Beck talks about jobs being important and after what he has been through, people's lives are very important. He stated if they go ahead and okay this, at the very least there is a possibility that this waste could migrate, that they could affect citizens in the county, the coal miners that work for Vigo who won't know for 20-30 years that they have health problems and also the people that work at the Warrick Power Plant and handle the coal, dump the coal, push the coal. He stated his first choice would be the Board wouldn't approve this at all. He stated his second choice would be that they table this and if they need any additional information he would be happy to dig it out for them. He stated he would like to make sure that this isn't approved until the IDEM and DNR are all in place, the water quality permits etc. He stated he would like to make it a condition if they encounter any waste or suspected waste due to the past dumping that they have to notify the Warrick County Health Department and the EPA. He stated this is not a normal coal mining permit; unfortunately this is a very unusual situation. He stated there are certain parameters they measure for water quality. He stated he would like the Board to require additional monitoring for the chemicals of concern at that mine. He stated the least they can do is protect the citizens of Warrick County by trying to monitor the situation. He stated he would hope they could avoid the railroad tracks being closed for not more than 5 minutes. He stated that would let emergency vehicles get through there. He stated if it is a truck facility he would suggest and request that they have to put a truck wash in. He stated a lot of times they act like they are going to do certain things and then change their mind and they don't have to go through the Board again. He stated he would also like to request if there is anyone who is affiliated with Alcoa, owns stock in Alcoa or Vigo Coal Co. or is in anyway associated with Alcoa or Vigo Coal Company that they abstain from voting on this issue. He stated he would be happy to answer any questions or supplement any information and show the Board any paperwork.

Mr. Mottley asked if he sent this information to DNR and IDEM and things. He asked if he planned on making a presentation at the April 7<sup>th</sup> hearing.

Mr. Musgrave stated he plans on being there on April 7<sup>th</sup>. He stated DNR had an informal conference last year where he brought this up.

Mrs. Rector asked if Attorney Doll wanted to make a statement about the lawsuits he is talking about.

Attorney Doll stated the lawsuits are a private right of action between individuals and the company and they don't have any direct bearing on the application. He stated but the other information he provided to the Board can be considered by the Board either in approving it or denying it. He stated the applicant and owner can respond if they choose to do so although they may or may not. He stated the witness has indicated viable options; the Board can approve it, deny it, table it, or conditionally approve it upon certain facts like means of transportation etc. He stated they can continue it if they don't wish to proceed on it until after the April 7<sup>th</sup> public hearing. He stated the Board is in control of the application at this point.

Mr. Dayvolt asked Mr. Musgrave if he specifically knows there was toxic waste dumped on this particular piece of property that they are trying to permit right now.

Mr. Musgrave stated he has talked to individuals who were at Squaw Creek before he went to work that know waste has been dumped outside of those acknowledged areas by Alcoa and yes some of it is in this permitted area.

Mr. Dayvolt asked if he is saying that second hand.

Mr. Musgrave stated yes, he is saying that second hand.

Mr. Winge asked if those people would come publicly.

Mr. Musgrave stated he believed the next remonstrator worked out there before he did so he has more knowledge.

Mr. Willis asked if there were any other questions by Board Members.

Mr. Mottley stated he needed to acknowledge that he sits on Alcoa's Community Advisory Board (CAB). He stated it is as a volunteer but he wanted to acknowledge that.

Mr. Willis asked for further remonstrators.

Leon Oxley approached the podium and stated he lives at 1988 N SR 61 Boonville, IN. He stated he too was an employee at Squaw Creek Mine starting in 1970 until 2000. He stated there was a lot of this stuff dumped. He stated he does not know the parameters of their scope of work or their permit but he knows if they go down one more seam of coal they are going to disturb the water table that holds all this back and from what he's seen they are talking about coming right down the haul road beside Squaw Creek and auguring out coal from both sides. He asked the Board to picture in their minds, that on one side of this they are going to dig a big pit and they are going to take the coal out and auger the coal back into the banks. He stated if they go 120', and some of their permits are showing 190', if they dig this pit like this and have it wide enough in the bottom to remove the coal and auger it out, and make a safe berm on this thing so it doesn't fall on the people working down there 120' deep, the top of that thing is going to be a quarter mile wide and there's no way they can do that there without getting into the stuff that was buried there. He stated he can tell the Board it is not only in the 10 sites that Alcoa has told them about. He stated starting in 1970 he saw it brought right into the pit, put right onto the pit floor and then the next spoil covered it up. He stated he is just like Mr. Musgrave, he doesn't think Warrick County needs to approve this. He stated he thinks they are opening a can of worms that can come back and hurt the people of Warrick County. He stated where they want to go is the lowest part of Squaw Creek. He stated when they come down through there and they take that out, if any of this stuff leeches out and runs in the water, he doesn't know what it does but he knows it is there. He stated if it leeches into the water and they have to pump it out of this hole they are working in, it can travel right on down Squaw Creek through Chandler into Little Pigeon Creek or travel the other way and go down Cypress Creek. He stated he would just ask this Board table this thing until they know all the facts and they won't know all the facts until

IDEM, DNR, and everybody involved in this tests the mud in Squaw Creek right now and see what is in it. He stated it has been draining through there for 40 years. He stated if it is there this thing should not be done. He stated if they are going to leech this stuff out again, this should not be done. He asked if they had any questions.

Mr. Willis asked for questions by the Board. There being none he asked for further remonstrators. There being none he asked the applicants if they would like to rebut.

Jim Beck approached the podium and stated he is representing Warrick Operations. He stated first of all he wants to say that they appreciate the service that Mr. Musgrave has in the Fire Department and a couple of things that are very important to Alcoa are their values and one of their values which every employee learns and hopefully remembers in the community is their environmental health and safety policy. He stated that means that those values, the environment health and safety comes before profit or production so in pursuing this application, and Mr. Messamore talked about all the various regulatory agencies that are looking at this permit, that is first and foremost. He stated they would not be compromising that value in pursuing this project. He stated to discuss the legacy materials that were disposed back at the former Squaw Creek Mine; those were done with the knowledge of the State at the time. He stated once they were made aware of the concerns, they have done extensive work with the Indiana Department of Environmental Management. He stated in fact they have done extensive characterizations with that site in addition with the Alcoa employees and consultants and late last year they sent a notice that they were completed with the investigation and considered it closed so they were going to do no more investigation into these sites. He stated however, there were sites they did identify, and characterize, monitor and place into our process with a way to manage these sites going forward. He stated Mr. Musgrave did mention environmental restrictive covenants and that is something that has been placed on these sites to prohibit any development. He stated if they look at the mine plan and the area that Alcoa seeks to mine through Liberty Mine LLC, it is not taking into account these areas, and they would be outside the mine boundary. He stated they are also restricted a little bit in what they might be able to say because of pending litigation and the pending lawsuits that Mr. Musgrave mentioned but he did want to make sure the Board knew that the most important thing is that this is an area that is deeper coal that has not been mined before, an area where they are outside these areas that are being controlled, have been characterized by the state of Indiana and in fact the State of Indiana and IDEM have all agreed that they are completed with the investigation and the characterization of this site as it relates to the legacy disposal of materials back in the 1960s.

Attorney Doll asked Mr. Beck if they have some investigative scientific materials, surveys, whatever, of what legacy materials were there and where they are and what concentrations they are at their disposal.

Mr. Messamore stated yes and they are actually part of their application to DNR.

Attorney Doll stated then they are semi-public.

Mr. Messamore stated yes, and the investigation is a part of IDEM's virtual cabinet.

Attorney Doll stated but not only are they part of the virtual cabinet, they could provide that to the Board if the Board asked him to do that.

Mr. Beck stated he didn't see any reason why they couldn't, considering they are part of their public applications permit before IDEM. He stated the question about waiting for other regulatory permits; the idea is to ultimately mine so they will not be able to mine until they get the permit from DNR and IDEM and the US Army Corps of Engineers etc.

Attorney Doll asked how long they think that process will take to fulfill the State and Federal permitting.

Mr. Messamore stated they are anticipating having these permits by the end of the year.

Attorney Doll stated they have some months here; this is not the last step in the chain of required permits.

Mr. Messamore stated no. He stated one point he does want to make, a lot of times there is references made to a permit and different aspects of the permit that the DNR has a technical staff of engineers, hydrologists and geologists that review the application from a technical standpoint; whereas this Board and himself might be considered laymen, so to speak. He stated but the technical aspect as far as having been mentioned about the water table and the width of the pit, movement, etc. is all being reviewed by technical staff at DNR.

Mr. Mottley asked if they tabled this until after the April 7<sup>th</sup> hearing that will not keep Liberty Mine from starting their mine at this time.

Mr. Messamore stated no.

Mr. Winge stated he is very pro-job and he thinks everybody on this Board is and he is also very pro-safety conscious and this is a step in the process that doesn't have to be done right away. He stated he thinks they will find this is one of the best Boards to work with when it comes to that kind of stuff but also if they have this meeting coming up, he doesn't see where this needs to be passed immediately. He stated they will work out something by advisory of their Attorney that he would like to see some of this data that is being talked about. He stated he also wants to see how this April 7<sup>th</sup> hearing comes out. He stated he wouldn't like this Board to look like it's already approving something they might have a problem with down there.

Attorney Doll stated they could table it and ask for additional information to be provided. He stated he realizes it is available to the general public but if they could make it specifically available to the Board they would expedite it, otherwise staff would have to download it and distribute it etc. He stated the public hearing on April 7<sup>th</sup> is a step in the permitting process, it is the local hearing requirement and thereafter they will still have weeks.

Mr. Messamore stated yes, there has already been one as Mr. Musgrave mentioned, DNR had an informal conference. He stated now IDEM is having a public meeting and yes it is just a step, there is more to do after that.

Attorney Doll stated and that is why they think it may take the rest of this year for the process to work its way through.

Mr. Messamore stated it will take a few more months but of course his job is to make sure they get these permits as quickly as possible.

Mr. Mottley asked about IDEM issuing closure last year.

Mr. Messamore stated IDEM issued a letter that states they agreed with the findings of the site investigation and the site conceptual model and that they agreed that the waste was limited to the areas identified in that report and they certainly can prove that to the Board with a copy of that letter.

Mr. Mottley stated he would like to see that letter because this is the first he's heard of it.

Mr. Messamore stated it is in the application on file at the library but they will get the Board a copy.

Mr. Dayvolt asked if this site has been core drilled to know where that vein of coal is located.

Mr. Messamore states yes.

Mr. Dayvolt asked if it was done by IDEM or by Liberty Mine.

Mr. Messamore stated the core drilling to identify the extent of coal reserves is typically done by coal companies and it was done both by Alcoa and Liberty Mine.

Mr. Dayvolt asked if they have any results from that telling what they found at what depth that could be presented to the Board.

Mr. Messamore stated if he is asking what the depths to the coal are...

Mr. Dayvolt stated no he is asking what the layers of soil show.

Mr. Messamore stated yes and in the application on file with the library and filed with DNR there are logs for several drill holes that shows the strata from the top of the ground to the coal seam and a few feet below the coal seam.

Mr. Dayvolt asked if it was on this particular piece of property.

Mr. Messamore stated yes on the area they are proposing to permit.

Attorney Doll stated he feels compelled to make a comment on the record. He stated the burden of proof on this application lies with the applicant, not the Board. He stated they don't have to go to the library and look up a thing. He stated if they want this permit properly considered, they



have to supply all the information relevant to the site that answers those usage questions. He stated the usage questions aren't established by this Board, they are established by the courts of the State of Indiana and part of it talks about adverse effects on surrounding areas, hazards to vehicles, pedestrians or residents. He stated if they have scientific information that they have and haven't presented to them as part of this application frankly as council to the Board he is going to represent that they turn it down or table it at the very least because the burden is on the applicant to provide that and they haven't. He stated they have no obligation to go to the library or to IDEM or anybody else so his advice would be to supply everything they've got that is not proprietary or under the advice of council not available because of litigation to this Board so they can properly consider the application. He stated otherwise he would recommend that the application is incomplete and not capable of being considered.

Mr. Willis asked if there were any other questions by the Board.

Mrs. Writsel asked if IDEM went out to test and so forth, if they did core drills.

Attorney Doll stated IDEM didn't do the testing.

Mrs. Writsel stated they didn't test, and asked if they just took a core sample.

Attorney Doll stated IDEM evaluated test results done by others and asked Mr. Messamore if that was an accurate statement.

Mr. Messamore stated both.

Mrs. Writsel asked if they went to areas that were alleged to have had materials dumped that are not within these zones that they have delineated to see if things were dumped where they weren't supposed to be.

Mr. Messamore stated yes. He stated he doesn't know if they went to every area but there were some areas they did test that were identified as areas that were questionable.

Mr. Willis asked for any other questions by the Board.

Mr. Winge made a motion to table the application until they receive the necessary information to complete the application as the Attorney recommended.

Mrs. Writsel seconded.

Discussion ensued about a more specific time table for continuing the application.

Attorney Doll asked how long it would take for the applicant to provide what they think is all the relevant data in the available repertoire that is not proprietary or subject to the advice of council not to be disclosed because of pending litigation, to make copies of it available to the Board. He asked how long it will take them to collect the information concerning what may have been dumped, where it may have been dumped, what is there etc.

Mr. Dayvolt added he would like to know what the State has said about it, the Federal government etc.

Mr. Messamore stated he thinks they can have that within the next week or 10 days.

Attorney Doll stated then they can distribute that and see if it is sufficiently answers the questions but it ought to be on the April agenda then if it needs to be continued then it can at that meeting. He stated he is not trying to keep them coming back continually.

Discussion ensued about Roberts Rules of Procedure of whether they have to continue the application to the next convened meeting.

Mr. Mottley asked how much information there is.

Mr. Beck stated they certainly have a lot of material that is in the public realm. He stated the application for the mine itself for DNR is reams thick so they can certainly get that public information for the Board to review. He stated they will certainly bring it to the Board Members to review but what he thinks he heard, before they took action they wanted to see the outcome of what happens with DNR, IDEM and US Army Corp of Engineers. He stated if they bring that material back, from what he hears from some of the Board Members they don't feel like they would be ready to take action on the Special Use permit until they've had a resolution from the other regulatory agencies. He stated so maybe having this be the last vote rather than in the chain of various other approvals would work.

Mr. Winge stated he wants to clarify that his first concern is public safety and overwhelmingly he thinks anyone on this Board will tell you jobs are important too but it has to be done within a safe boundary. He stated this is such a touchy situation if they are going to be dealing with hazardous materials they want to be careful. He stated if they get the right information, they will seek council and sit and look at it. He stated if they don't understand it they will ask them a lot of questions. He stated they'll table this thing to the 18<sup>th</sup> of April which will be the fourth Monday and at that time hopefully they've got all the information in.

Attorney Doll asked if there are some of the Board Members that want to be the last step in this process. He stated he is not advocating they be the last step in this process he is just asking that question because if the Board wants them to run the gauntlet of State and Federal regulators and see if they pass muster with the application so that when they come back everything is already done. He stated if they want that to be done, the gentlemen may want to withdraw the application, finish the State and Federal regulatory process and towards the end of it re-file the application. He stated he is not trying to tell them how to do business, they have every right to be here, and they are welcome to be here.

Mr. Dayvolt stated one thing he would like to see showing them where the sites are that have been dumped. He stated when he was a kid he saw Alcoa being built. He stated he remembers when Lester Vann held on to his property in the middle of all that until he was the last one that Alcoa bought out and they gave him quite a bit of money so he is a resident for a long time. He

stated he has friends here. He stated Warrick County has been good to him. He stated Warrick County has been good to Alcoa. He stated Warrick County has been good to the Coal Company. He stated needless to say the friends that he has here and the residents of Warrick County as he sits on this Board, he wants them to be as safe as they can be. He stated that he is not throwing anything on anybody here but that is his own personal heart towards this matter. He stated the more safe that you can make him feel, the better off they are.

Mr. Messamore stated they will take the Attorney's recommendation under advisement with Alcoa and Vigo Coal's management team.

Mr. Winge stated he wanted to stress they want to do everything they can to work with them but they've got to look at both sides of this and be absolutely fair.

Mrs. Rector stated one statement she would like them to consider, what she's been informed is it could be thousands of pages, that there be enough copies made for each Board Member.

Mr. Messamore asked how many copies.

Mrs. Rector stated 9-10 copies and then the Board will have to come in and pick up the packets.

Mrs. Writsel asked if they want the entire application or just the sections that relate to environmental concerns. She stated she is sure there are tons of pages that have nothing to do with environmental concerns.

The Board agreed.

Mr. Dayvolt stated that is basically what they want to know, they want to feel safe for the residents of Warrick County.

Mr. Mottley stated he would like to see the restrictive covenant map. He stated to Mr. Messamore and Mr. Beck, they know he has made motions to approve permits for them before so it is not against them, it is what is best for the County. He stated when he went on this Board approximately 14 years ago he took an oath and he has tried to stick to it and be straightforward.

Mr. Messamore stated they understand this is a sensitive issue.

Mr. Winge amended the motion to table BZA-SU-11-06 until the April 25, 2011 BZA Meeting. He asked if they would come up with sufficient information on the areas of their concern and get 9 copies to the office, they will pick it up and go over it.

Mr. Beck stated he certainly understands and respects their role and get you the documentation that they need. He stated he again wants to stress that they do not put profit or production in front of their environmental health and safety policy and so that was key in evaluating this project and they will make sure they give them the material they need to make an informed decision.

Mrs. Writsel seconded the amended motion and the motion carried.

**OTHER BUSINESS:**

None.

**ATTORNEY BUSINESS:**

None.

**EXECUTIVE DIRECTOR BUSINESS:**

None.

Being no other business the meeting adjourned at 7:30 p.m.

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Larry Willis, Chairman

ATTEST:

The undersigned Secretary of the Warrick County Board of Zoning Appeals does hereby certify the above and foregoing is a full and complete record of the Minutes of said Board at their monthly meeting held March 28, 2011.

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Sherri Rector, Executive Director & Secretary